

RCRA, SUPERFUND & EPCRA CALL CENTER MONTHLY REPORT
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1. Land Disposal Restrictions and Use Constituting Disposal

A facility generates an ignitable hazardous waste (D001) which is used to produce asphalt that will be applied to the land. Recyclable materials used in a manner constituting disposal must meet three criteria before they can be applied to the land: 1) the product must be produced for the general public's use; 2) the recyclable products must undergo a chemical reaction so as to become physically inseparable from the product; and 3) the product must meet the applicable land disposal restriction (LDR) treatment standards in 40 CFR Part 268, Subpart D (Section 266.20(b)). Does a facility measure compliance with the LDR standards prior to incorporation of the D001 waste into the product or do the treatment standards apply after the waste becomes a product?

Compliance with the LDR treatment standards applies to the product that will be used in a manner constituting disposal, not to the waste before it becomes a manufactured product. Recyclable materials that are used in a manner constituting disposal are not subject to regulation "if such products meet the applicable treatment standards in Subpart D of Part 268 (or applicable prohibition levels in Section 268.32 or RCRA Section 3004(d) where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain" [emphasis added] (Section 266.20(b)). In this example, the asphalt product must meet the LDR treatment standards that correspond to D001 waste, namely DEACT, and meet Section 268.48 standards for underlying hazardous constituents before the asphalt can be applied to the land (Section 268.40).